

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA

ASSOCIATION OF EQUIPMENT)
MANUFACTURERS, *et al.*,)
Plaintiffs,)
v.) Case No. 1:17-cv-00151-DLH-CSM
THE HON. DOUG BURGUM, Governor of the)
State of North Dakota, in his Official Capacity, *et*)
al.,)
Defendants.)

**THE MANUFACTURERS' RESPONSE TO THE MOTION TO INTERVENE BY
THE NORTH DAKOTA IMPLEMENT DEALERS ASSOCIATION**

Plaintiffs, the Association of Equipment Manufacturers (“AEM”), AGCO Corporation (“AGCO”), CNH Industrial America LLC (“CNH”), Deere & Company (“John Deere”), and Kubota Tractor Corporation (“Kubota”) (collectively, the “Manufacturers”), by counsel, respectfully state as follows in response to the Motion to Intervene (Dkt. 32) filed by proposed intervenor the North Dakota Implement Dealers Association (“NDIDA”).

The Manufacturers do not oppose NDIDA’s Motion to Intervene so long as the Court denies NDIDA’s request “that any action on [the Manufacturers’] Motion for Preliminary Injunction [Dkt. 9] be stayed pending the Court’s decision of NDIDA’s Motion to Intervene so that NDIDA may participate in the Motion for Preliminary Injunction.” *See* Mem. in Support of Mot. to Intervene (Dkt. 32-1) at p. 13 of 13. Under the current schedule, the existing Defendants have until September 30, 2017—thirty-one days from today—to respond to the Manufacturers’ Motion for Preliminary Injunction. Thirty-one days is more than enough time for NDIDA to respond, especially in view of NDIDA’s involvement in drafting the statutory provisions at issue. *Cf.* D.N.D. Civ. L.R. 7.1(B) (parties typically have 14 days to respond to a non-dispositive

motion).

In addition, NDIDA’s intervention is appropriate only with respect to the Manufacturers’ claims under the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, namely, Counts One, Three, Five, Six, Eight, and Ten. The Manufacturers’ remaining claims—Counts Two, Four, Seven, and Nine—are brought against the Governor and Attorney General of the State of North Dakota under 42 U.S.C. § 1983, a statute that applies only to persons who act “under color of any statute, ordinance, regulation, custom, or usage, of any State.” 42 U.S.C. § 1983; *see generally Federer v. Gephardt*, 363 F.3d 754, 758 (8th Cir. 2004) (“42 U.S.C. § 1983 . . . requires that the offending action be done under the color of state law”). Although NDIDA is not a state actor, its Proposed Answer (Dkt. 32-2) seems to envision NDIDA answering the Manufacturers’ claims under 42 U.S.C. § 1983 but avers only that “NDIDA is without knowledge of what future actions government officials might take” with respect to enforcing the statute in question. *See* NDIDA Proposed Answ. ¶¶ 202, 211, 223, and 232. Therefore, with respect to the Manufacturers’ claims under 42 U.S.C. § 1983, NDIDA’s intervention is neither necessary nor appropriate to protect the interests of NDIDA or its members.

Finally, the Manufacturers respectfully request that—if permitted to intervene—NDIDA be required to obtain leave from the Court before propounding discovery to the Manufacturers. *See generally Planned Parenthood Minn., North Dakota, South Dakota v. Daugaard*, 836 F. Supp. 2d 933, 943 (D.S.D. 2011) (imposing same condition on intervenor in similar circumstances). The justification for intervention articulated by NDIDA is that it has “first-hand knowledge of the purpose of the bill and other evidence” and that it can “easily interview [farm equipment dealers to] determine how this law will affect them.” *See* Dkt. 32-1 at p. 10 of 13. NDIDA does not need discovery from the Manufacturers to accomplish these stated objectives.

Indeed, because the Manufacturers' Complaint presents primarily questions of law, it is doubtful that any discovery from them will be necessary to resolve this case.

Dated: August 29, 2017

Respectfully submitted,

ASSOCIATION OF EQUIPMENT MANUFACTURERS,
AGCO CORPORATION,
CNH INDUSTRIAL AMERICA LLC,
DEERE & COMPANY, and
KUBOTA TRACTOR CORPORATION

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CERTIFICATE OF SERVICE

The undersigned certifies that on August 29, 2017, a true and correct copy of the foregoing **THE MANUFACTURERS' RESPONSE TO THE MOTION TO INTERVENE BY THE NORTH DAKOTA IMPLEMENT DEALERS ASSOCIATION** was served on the following counsel of record via CM-ECF:

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